

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

ePLUS, INC.,
Plaintiff,
v.
LAWSON SOFTWARE, INC.,
Defendant.

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: Civil Action
: No. 3:09CV620
:
: January 26, 2011
:

COMPLETE TRANSCRIPT OF **JURY TRIAL**
BEFORE THE HONORABLE ROBERT E. PAYNE
UNITED STATES DISTRICT JUDGE, AND A JURY

APPEARANCES:

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UNITED STATES DISTRICT COURT

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1 (The proceedings in this matter commenced at
2 9:14 a.m. The jury is not present.)

3 THE CLERK: Civil action No. 3:09CV00620,
4 *ePlus, Incorporated v. Lawson Software, Incorporated.*

5 Mr. Scott L. Robertson, Mr. Craig T. Merritt,
6 and Mr. Michael T. Strapp represent the plaintiff.
7 Mr. Dabney G. Carr, IV, represents the defendant.

8 Are counsel ready to proceed?

9 MR. ROBERTSON: Yes, Your Honor.

10 MR. McDONALD: Yes, Your Honor.

11 THE COURT: All right. The juror who usually
12 sits right here on the end, the blonde lady, yesterday
13 afternoon told us that she might need to leave early
14 today to get some medicine that was being prescribed
15 for her, and we said fine, but you can also go in the
16 morning and we'll start later.

17 And also after, I guess after they were
18 excused, I mentioned to Mr. Langford that she could go
19 during the lunch hour, too, if she wanted to, that we
20 would work that out.

21 Mr. Langford this morning approached her.
22 Apparently, there's some difficulty about being sure
23 when the medication is going to be called in for her,
24 but this is all beside the point to the point that I
25 am now going to bring to your attention. It's just

1 the lead up to it. She said when he suggested, as I
2 had asked him to do, that if she wanted to go at
3 lunch, that we'd work that timing out for her. She
4 said, Well, I'll just go off my meds.

5 And Mr. Langford wisely said, Well, no, the
6 judge wouldn't want you to do that. And she said,
7 Look, I just want to get off this jury. I'm talking
8 one thing; they're talking another. They're talking
9 about me. They are conspiring against me.

10 And Mr. Langford said, I don't want to hear
11 anymore, in a polite way. He said, Do you want me to
12 bring this to the Judge's attention? And she said,
13 Yes.

14 And having been brought to my attention, it
15 seems to me as if it's appropriate to direct it to
16 your attention to solicit your ideas about what, if
17 anything, I ought to do.

18 MR. MERRITT: Can we chat for a minute, Your
19 Honor?

20 THE COURT: Yes, you can. I'll tell you I
21 have not had this particular iteration of a problem in
22 the time that I've been practicing law.

23 MR. CARR: I haven't either, Your Honor.

24 THE COURT: Mr. Northrup and I one time had a
25 case, Mr. Carr, where I had one of my key witnesses

1 came back in an arbitration after lunch and he was
2 drunk. That was a piece of cake to solve compared to
3 this.

4 MR. CARR: Does it make a difference that the
5 jury has started deliberations? I've had jurors like
6 we had where the woman got sick during trial, but I
7 don't think I've never had a situation in the middle
8 of deliberations.

9 THE COURT: Oh, yeah, I've had them called
10 away because of illness, a death in the family. And
11 the federal system doesn't have alternates for civil
12 cases, which is why I impaneled a nine-person jury to
13 begin with in a three-week case. So I don't think the
14 excusing of her makes a difference whether it's after
15 or before.

16 It's, substantively, what do you all suggest
17 I ought to do? I think you are both entitled to be
18 heard on that.

19 I don't know that you all know this. This is
20 something perhaps you might take into account because
21 I know it, and it's really irrelevant to anything
22 that's going on. The lady about whom we're speaking
23 is a smoker. And she comes back from the breaks
24 sometimes later than the 20 minutes allotted and
25 sometimes she's late coming in in the morning. And it

1 may be that something has been said about that. I
2 don't know. To my knowledge, nothing has been said
3 about that, but in any event, that's a fact that I
4 know that you all are entitled to know.

5 Yes, Mr. Merritt.

6 MR. MERRITT: Your Honor, I've never
7 encountered this either and join Mr. Carr in that
8 regard.

9 I will say that it has not gone unnoticed
10 that for whatever reason this juror appears to be
11 disengaged from the process.

12 THE COURT: I'm not following you about that.

13 MR. MERRITT: You see body language in the
14 jury box.

15 THE COURT: You mean --

16 MR. MERRITT: Disengaged from her fellow
17 jurors generally. We have commented on it among
18 ourselves. I don't know if it has anything to do
19 with -- we don't know what her situation is with the
20 medication or what it's for or anything. It's all
21 surmise and we can't begin to guess. And we don't
22 know, obviously, what anybody's leanings are on any of
23 the issues.

24 We are concerned if there's a juror who for
25 whatever reason has psychologically checked out of

1 this process and is not a full participate, that that
2 could cut against either party and may not be serving
3 the whole jury system well.

4 So from that standpoint we think it's a
5 concern if she's not a fully engaged participate in
6 this regardless of what her leanings are. Then
7 perhaps that doesn't serve either party.

8 THE COURT: I didn't notice during the trial
9 or closing arguments any of what you said, but I have
10 to tell you, I haven't really been watching the jury.
11 I've been paying attention to what you-all have been
12 doing. It's so much going on that I pretty much have
13 really focused on the main participants rather than
14 the jury.

15 MR. MERRITT: It had became noticeable during
16 the deliberative process when the jury was coming back
17 in. There was a very -- I don't know if this is a
18 juror who has distanced herself from the others or
19 whatever, but just the body language, the looking
20 forward at the wall, and there appears to be some just
21 general tuning out of what is going on to the point
22 where we had commented on it among ourselves yesterday
23 we had noticed it.

24 Again, I don't know what that portends for
25 either party. For all I know, she may be the only

1 person on the jury who thinks that ePlus has the
2 stronger side of this, but either way, if we have a
3 disengaged person who is not engaged with the other
4 jurors and engaged with the process, we're not sure
5 that that -- maybe she should just be released to go
6 home, and we would still have the appropriate number
7 of jurors, and they would hopefully be able to reach a
8 verdict.

9 THE COURT: Mr. Carr, what saith you?

10 MR. CARR: Your Honor, I guess what I would
11 like to suggest is that we don't do anything right
12 now. I would like a chance to call Mr. McDonald and
13 chat with him about it and think about it.

14 I am concerned about excusing a juror because
15 they're not getting along. I think there are going to
16 be a lot of reasons to excuse a juror, and illness
17 being a good reason. But there are all kinds of
18 juries where internally they are not getting along.
19 And I'm not sure it's appropriate if somebody doesn't
20 want to participate or feels like they are not
21 participating fully, that we just let them go, and
22 that's the way we reach -- we just allow the jury to
23 be smaller, and I want to think about that.

24 So my suggestion would be that we go ahead
25 and send them off to deliberate this morning. And

1 maybe by the lunch hour bring them back in and we
2 resolve it. Or maybe we just come back with you.

3 THE COURT: Oh, no. It has to be resolved
4 right away. That's one of the problems about Mr.
5 McDonald taking off now. He's here, isn't he,
6 available to the telephone?

7 MR. CARR: Yes, he's available, and if you
8 want to take a five-minute break or a ten-minute
9 break, I can go call him.

10 THE COURT: Yes. And you tell him to be on
11 station because I'm not going to let this go forward
12 until I understand what the situation is.

13 One of the things I can do is go ahead and
14 question her apart from the other jurors and ask her
15 what the situation is.

16 If we are going to do that, there are two
17 ways to do that:

18 One is to have her come into my office with
19 one person from each side and the court reporter and
20 do it.

21 Another is to ask her to come in here. And I
22 think what I would do is clear the courtroom of all
23 but the representatives, Mr. Robertson, Mr. Merritt,
24 and Mr. Carr, and if Mr. McDonald wanted to be on the
25 phone, I could do that, but I don't want a lot of

1 people involved. It's intimidating to somebody to
2 have too many people.

3 MR. MERRITT: Your Honor, just two things I
4 agree completely with Mr. Carr that jurors should be
5 expected to butt heads over things, and we should
6 never have anybody leave the jury.

7 The statement "The other jurors are
8 conspiring against me" has a, for lack of a better
9 word, a slightly --

10 THE COURT: Excuse me one minute. I think
11 she also said, Mr. Langford, you correct me if I'm
12 wrong, "They're talking about me."

13 MR. LANGFORD: Yes.

14 THE COURT: She also said, "They're talking
15 about me," and I don't know that I actually said that.
16 I intended to, and I think I left that out of the
17 discussion accidentally.

18 So that connotes a problem, I think. I
19 didn't perceive Mr. Merritt's motion as excusing her
20 for the reason that there was conflict.

21 MR. MERRITT: Absolutely not.

22 THE COURT: I think he was saying she's
23 disengaged from the process, and this is further
24 evidence of what we believe we've been sort of looking
25 at.

1 MR. CARR: I have to say, honestly, appearing
2 to be disengaged from the process is not a reason to
3 excuse a juror.

4 THE COURT: Appearing to be is not because
5 there are plenty of jurors who drift off and look up
6 there.

7 MR. MERRITT: Your Honor, were it not coupled
8 with the things that you just reported to us,
9 obviously, we wouldn't have even raised it, but I
10 thought I would share with the Court our own
11 observation to the extent it's useful.

12 THE COURT: Do you think I ought to talk to
13 her about this now?

14 MR. CARR: I think that's a good idea. And,
15 Judge, you can do it in whatever form you think best,
16 but she may feel more comfortable sitting in your
17 office than sitting in this courtroom.

18 THE COURT: That's fine with me. That's why
19 I said I'm asking your views on it. Is that all right
20 with you-all?

21 MR. MERRITT: It is, Your Honor.

22 THE COURT: All right. Well, Mr. Robertson,
23 Mr. Merritt, Mr. Carr, and the court reporter will
24 come back.

25 MR. ROBERTSON: Your Honor, I'm happy to just

1 have Mr. Merritt go back.

2 THE COURT: That's fine. And we'll do that
3 back in my office and see where we go. All right. I
4 guess that's it for now.

5 (Recess taken. Pages 3351 through 3372 are
6 contained in a sealed transcript and filed under seal.
7 This transcript resumes with page number 3373.)

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1 (Court is resumed and the jury is present.)

2 THE COURT: Ladies and gentlemen, I'm going
3 to give you some further instruction. One of the
4 jurors feels some discomfort in the deliberative
5 process. And it is normal in the deliberative process
6 that people have different views about things.

7 I don't know if you have ever seen the movie
8 called *Twelve Angry Men*, but it's a case study in how
9 sometimes the process works. People have views, and
10 then the more there's a discussion of views, sometimes
11 people change their minds on things. And so what I'm
12 going to do is this: Ask you to consult with one
13 another carefully and think over again with a view to
14 reaching a unanimous agreement.

15 So each of you have to decide this case, as I
16 said earlier, for yourself, doing that only after an
17 impartial consideration of the evidence in the case
18 with your fellow jurors.

19 As I've said before, you shouldn't hesitate
20 to reexamine your own views or change your opinion if
21 it is erroneous. You should keep in mind that each
22 juror of one view should reconsider his or her own
23 views in light of the views of the majority in this
24 process.

25 And likewise, each juror who is in the

1 majority should reconsider his or her own views in
2 light of the opinions of the jurors who are in the
3 minority.

4 Of course, as I told you before, you should
5 not surrender your honest conviction as to the weight
6 or effect of evidence solely because of the opinion of
7 your fellow jurors or for the purpose of returning a
8 verdict.

9 You need to keep in mind at all times that
10 the plaintiff has the burden of proving by a
11 preponderance of the evidence the issue of
12 infringement. And the defendant has the view of
13 proving by clear and convincing evidence, as I have
14 defined it in those instructions, and you have them
15 back there, the issues of invalidity.

16 And you need to keep those burdens of proof
17 in mind when you're deciding the case. It's important
18 to assess when you're looking at infringement: Now,
19 has to plaintiff proved it's more likely than not that
20 this claim, that claim, or the other has been
21 infringed? Because you're looking at the evidence,
22 and nothing is perfect in this world, and you're never
23 going to get all the clear answers that you want.
24 That's just the way things are.

25 I want to get here the instruction on clear

1 and convincing evidence.

2 Does anybody remember the number of it here?

3 Because you have to consider the same thing
4 for the defendant. In No. 29, that appears. And I've
5 told you the claims of an issued patent may be found
6 invalid. Then I've told you that Lawson must prove by
7 clear and convincing evidence that a claim is invalid,
8 considering it claim by claim, and that that kind of
9 evidence, clear and convincing, is evidence which
10 produces in your minds an abiding conviction that the
11 truth of the factual contentions are highly probable.

12 So in making your decisions, you do have a
13 difference in assessing the question of infringement
14 and the questions of invalidity, and you need to keep
15 that in mind.

16 It's also a good idea to keep in mind that
17 this case has taken considerable time of you and the
18 parties to try. And there doesn't appear any reason
19 to believe anybody else could decide it any better
20 than you can. You-all are eight competent, capable
21 people who have devoted your time, effort and
22 attention to this.

23 And it isn't unusual in the course of jury
24 deliberations that people have strong feelings about
25 one issue or another, one side or another. And that's

1 all right. There's nothing wrong with that. But in
2 the course of trying to discharge your duty, you have
3 to calmly, carefully, deliberately talk about it all,
4 and then remember that you're not partisans, you're
5 the judges in the case. And considering then which is
6 the right result according to the instructions that I
7 have given you.

8 So if you-all will continue your
9 deliberations in that fashion, I will appreciate it
10 very much. And you-all can retire.

11 Anything else that you think I need to say?

12 MR. MERRITT: No, sir.

13 MR. CARR: No, Your Honor.

14 THE COURT: Thank you very much. You can
15 retire to deliberate your verdict.

16 (The jury is retiring to continue their
17 deliberations at 10:08 a.m.)

18 THE COURT: Just for the record, that was a
19 modified Allen charge, but I think I tried to modify
20 it to what circumstance we were confronted with by the
21 facts, mindful of the fact that Mr. Carr -- I think
22 you said that some of it is stern, of the traditional
23 charge is stern. And a lot of that has to do with how
24 it's articulated, but the fact of the matter is it may
25 presuppose the first part of it, the standard charge,

1 kind of presupposes that they actually have locked,
2 and I'm not sure that they actually have locked
3 inasmuch as they have not completely engaged. And
4 that's what I hope we can accomplish now.

5 MR. ROBERTSON: *Twelve Angry Men* is one of my
6 favorite movies, Judge.

7 THE COURT: It's one of the best. Somebody
8 made an updated version.

9 MR. ROBERTSON: Jack Lemon was in it in the
10 Henry Fonda role.

11 THE COURT: Yes, but it wasn't as good as
12 Henry Fonda.

13 THE CLERK: Better than *My Cousin Vinny*?

14 THE COURT: It's of a different genre.

15 THE CLERK: I've seen it. I'm just kidding.

16 THE COURT: Make sure Mr. McDonald is around.
17 And he can't go anywhere that he's not available to
18 the phone until this is over.

19 MR. CARR: I have his cellphone number, and
20 he answers on the second ring.

21 THE COURT: Okay.

22 (Recess taken.)

23 (Court is resumed at 4:45 p.m. The jury is
24 not present.)

25 THE COURT: You have got the question.

1 Several jurors were under the impression that the
2 Court said we would have Dr. Shamos' claim by claim
3 analysis for review. Is it possible to get that - I
4 guess it means along with Dr. Weaver's - claim by
5 claim analysis?

6 I don't know what I said that suggested that.
7 It may have been that I said it hadn't been proofed.
8 So they inferred it was being proofed and it would be
9 there, but I'm fairly sure I told them they couldn't
10 have it because we didn't have it. And I think I said
11 it hadn't been proofed.

12 Isn't that what I said?

13 MR. CARR: I don't remember you talking about
14 a claim by claim analysis. I remember talking about
15 the transcript of the testimony.

16 THE COURT: Their whole testimony. That's
17 what I mean.

18 MR. ROBERTSON: There was a request for all
19 the transcripts.

20 THE COURT: It was the transcript of the four
21 experts.

22 MR. ROBERTSON: Let me try and break this
23 down because I'm a little confused by this. The only
24 overlap between Dr. Weaver, who was our infringement
25 expert, and Dr. Shamos, who was their non-infringement

1 expert, is on those issues. Both had to do a claim by
2 claim, element by element analysis. That testimony is
3 what the testimony is.

4 I think their best recollection of what that
5 testimony is is what they need to rely on because
6 we're not giving them the transcripts from what I
7 think we understood from the prior ruling.

8 So that's where we are at in that scenario.
9 They need to use their recollection, as the Court has
10 instructed them. I think at this point we're still
11 not in a position to give them transcripts. I'm still
12 not comfortable in giving them the transcripts on
13 that. But if the overlap is just the infringement
14 issue, but it's a little ambiguous whether this goes
15 beyond that.

16 But, Your Honor, I think they just have to
17 rely on their recollections and do the best they can
18 with the evidence before them. They do have the
19 Lawson documents they can refer to in order to
20 determine whether there's infringement.

21 They do have Dr. Weaver's demonstration that
22 they can look at to determine. And that is what they
23 should consider.

24 THE COURT: Well, it occurs to me that if
25 we're going to give them claim by claim analyses, we

1 need to tell them that the claim by claim analyses
2 relates to two components of the case; one is
3 infringement and one is invalidity.

4 And if what they want is only the
5 infringement, then we need to understand that. If
6 they want the invalidity, then that also would
7 require, if we gave them Dr. Shamos' invalidity
8 opinions, we'd have to give them Mr. Hilliard's as
9 well, I would think.

10 MR. CARR: Yes, sir, I would agree with that.

11 THE COURT: Okay.

12 MR. CARR: But you're back to the question, I
13 think Mr. Robertson pointed out, whether to give them
14 the transcript.

15 THE COURT: Yes.

16 MR. CARR: We're inclined to give them to
17 them, but we had this discussion yesterday, and I
18 think it's up to you.

19 THE COURT: We first have to identify where
20 the claim by claim analysis is in the transcripts.
21 You first have to say where is that.

22 MR. CARR: We talked about that a little bit
23 yesterday. What I would say I believe you said was it
24 will be difficult for us to choose which part of the
25 testimony to give them, that we probably just have to

1 give it all to them. That's an issue.

2 MR. ROBERTSON: I agree with Mr. Carr. Not
3 only is it an issue as to what we'd agree on, it would
4 take some time to agree on it.

5 Let's be clear. Dr. Shamos in his claim by
6 claim analysis, and this isn't improper, I'm not
7 trying to suggest that, but what he said was, This is
8 absent. And all I would point out is what is absent.

9 For example, on infringement he said, There
10 are no catalogs in the Lawson system. And he based
11 that on his interpretation of the Court's
12 construction. So he didn't have to go through every
13 element by element basis.

14 His position was if an element is missing,
15 that's the end of the inquiry. I don't disagree with
16 that theoretical. Obviously, I disagree with it as to
17 the facts.

18 Invalidity, we don't need to go through every
19 claim by claim element. We say, Here's what's missing
20 from the prior art. Once we do that, an element is
21 missing, as the Court understands, that establishes
22 that there's no invalidity because you have to have
23 all of the elements.

24 So the instruction is correct. The evidence
25 is focused on what is either present or absent, and

1 that's what's going to be there. The other part about
2 what the problems with the transcripts are, and I
3 don't know where we are on whether we have proofed
4 them yet, but we went back and were looking at some of
5 them, and there are a number of side bars that are in
6 the transcript during the course of those --

7 THE COURT: They would have to be edited out.

8 MR. ROBERTSON: Exactly.

9 THE COURT: No question about that.

10 MR. ROBERTSON: So this is going to take some
11 time, Your Honor. So I come back to the situation we
12 still have a problem with the proofs. We still have a
13 problem with editing out things. And we still have a
14 problem with putting undue emphasis on the
15 transcripts.

16 I just still think -- I sense what they are
17 grappling with, Your Honor.

18 THE COURT: I'm glad that you have got that
19 extrasensory perception, because I can't claim to be
20 as prescient as you are about it.

21 MR. ROBERTSON: You have some stellar
22 instincts, Your Honor. But I just think we have to
23 stick with where we started out and just say you have
24 to -- it does need to be claim by claim, element by
25 element, but you need to rely on your memories and

1 your recollection of what the evidence is.

2 MR. CARR: Your Honor, one other suggestion.
3 We just have different views about whether they should
4 have the transcripts. We don't think that the
5 proofing problem is big. But if you decide that they
6 should have some transcripts, given the time, that's
7 something where you can tell them come back at nine,
8 and the parties overnight can pull together the
9 transcripts, take out the side bars and have them
10 ready for the jury in the morning.

11 MR. ROBERTSON: I think that would be an
12 enormous exercise, Your Honor. Particularly since I
13 have great confidence in Mr. Carr, who has been
14 thoroughly empowered, as I understand when the Court
15 asked that question, but we're going to be dealing
16 with people in Minnesota who are out there. I don't
17 think we're going to come to an accord over what is
18 supposed to be presented to them and what's not
19 supposed to be presented to them in this transcript.

20 MR. CARR: I wasn't suggesting that we do
21 anything but give them all the testimony from each of
22 those witnesses.

23 THE COURT: You were talking about giving
24 them all the testimony from each of those three
25 witnesses but excise the side bars.

1 MR. CARR: Exactly. I think it's four
2 witnesses.

3 MR. ROBERTSON: Your Honor, then there's
4 J-CON involved, there is P.O. Writer, things that
5 didn't have to do with this claim by claim, element by
6 element analysis. I'm not clear. This looks like
7 they're talking about infringement.

8 THE COURT: Do you know what this is?

9 MR. ROBERTSON: Three fingers.

10 THE COURT: That's it. There's an old phrase
11 that's indigenous to the bar round here. It's the
12 three phrase rule. And that is you made your point
13 three phrases ago. Stop talking.

14 MR. ROBERTSON: I understand.

15 THE COURT: I fear that it is too complicated
16 a question to pull all this out now given the rulings
17 that I've made about what is pertinent and what is not
18 given some of the testimony, stricken some of the
19 testimony, and that exercise would be one that would
20 take a great deal of time and care, and I have to say
21 that I've not seen that process work very well. It's
22 not as bad here as it is in Congress, but it's
23 approaching it.

24 Although I notice that today you-all didn't
25 sit together, and I don't understand why you didn't.

1 MR. ROBERTSON: I will hug Mr. Carr right
2 now.

3 THE COURT: I bet --

4 MR. CARR: That's right. Mr. Strapp should
5 sit on my side.

6 THE COURT: All right. I'm going to advise
7 them the transcripts are not available; therefore, you
8 need to rely on your recollection of the evidence. Is
9 that sufficient?

10 MR. ROBERTSON: Yes, sir.

11 THE COURT: Now, give this to them, Mr. Neal,
12 so they can continue. They are going to stay -- and
13 mark that Court Exhibit 9.

14 The jury said they want to stay until 5:30
15 night and leave. One of the jurors is from
16 Fredericksburg, and his wife called and reported that
17 they have an inch of something up there, and he's
18 spending the night in a hotel, so he'll be here.

19 One of the jurors needs to get some medicine
20 in the morning. So we're not going to start until
21 9:30, and that can be done.

22 The jurors let Mr. Langford know that they
23 want to eat dinner tomorrow night, and they wanted to
24 work as late as it took.

25 Don't plan any birthday dinners tomorrow.

1 MR. CARR: I've run out of relatives to claim
2 a birthday.

3 THE COURT: What?

4 MR. CARR: I've run out of relatives to claim
5 a birthday.

6 THE COURT: I was looking for one. I thought
7 it was a good idea. But my wife's is not until
8 February.

9 So that's what we've been told. Now, what
10 all that means, I don't know, but now you know.

11 We'll wait and see if they say anything else.
12 My suggestion is that you may just want to stay around
13 for the next half hour to see if anything else
14 happens. I don't have a specific reason for that
15 except that I'd hate for Mr. Robertson to try to make
16 it here in four minutes and break his neck on the ice.

17 MR. ROBERTSON: Ms. Haggard suggested I
18 needed exercise. I tried to tell her I've already
19 lost 13 pounds in four weeks, Your Honor.

20 MR. MERRITT: Judge, I have run up and down
21 the hill so many times today that I'm going to need to
22 ring out my underwear. It's pouring rain. My socks
23 are literally squishing when I walk.

24 THE CLERK: My wife called and wanted to know
25 if I could spend the night in a hotel.

1 THE COURT: If you can get Mr. Galindo to
2 approve it, I'm all for it.

3 All right. We'll be in recess.

4 (Recess taken.)

5 (Court resumes at 5:26 p.m. The jury is
6 present.)

7 THE COURT: It's snowing outside. Well, you
8 can see better than we can. You have got more glass
9 than we've got.

10 I don't know what's going to happen. You've
11 got the number to call tomorrow and we'll see. Unless
12 otherwise instructed on that, we'll start at 9:30 in
13 the morning.

14 As I understand it, you want to work tomorrow
15 night as late as you want to work. That's fine with
16 me. I'll make sure that we tell the people who have
17 to deal with the heat and things like that we have
18 some of that, and we'll work out some dinner
19 arrangements for you.

20 With this advance notice, we'll try to find a
21 couple of places with a menu or something. Is there
22 anybody who doesn't like pizza or can't eat pizza?
23 All right. You may be eating pizza. We'll see.

24 All right. We'll see you tomorrow at 9:30.
25 Drive carefully.

1 (The jury is exiting the courtroom at 5:28
2 p.m. to return in the morning at 9:30 a.m.)

3 THE COURT: All right. Anything else you-all
4 need to deal with today?

5 MR. CARR: No, sir.

6 MR. ROBERTSON: No, sir.

7 THE COURT: Sounds to me like it may be a
8 long day tomorrow.

9 MR. CARR: Because of the weather? I don't
10 understand.

11 THE COURT: Because the jury has told us they
12 are going to work until they finish.

13 MR. CARR: Oh, a long day. I thought you
14 said a lost day.

15 MR. MERRITT: Judge, if they finish and the
16 pizza has already been ordered, can we have a pizza
17 party?

18 THE COURT: You sure can.

19 THE CLERK: Nothing wrong with Little
20 Caesars.

21 THE COURT: I won't join you, but you-all can
22 have whatever is left.

23 THE CLERK: Your Honor, you do remember the
24 time you sent me out for a turkey sandwich in
25 Alexandria for one of the jurors, don't you?

1 THE COURT: Yes.

2 THE CLERK: I'll always remember it.

3 THE COURT: His response was, "Do what?"

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5 (The proceedings were adjourned at 5:29 p.m.)

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